FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1721 OF 2005
IN
WRIT PETITION NO. 6150 OF 2001

Office notes, office Memoranda of appearances, Court's orders or directions & Registrar's orders.	Coram, :	Court's or Judge's Orders

Mr. P.G. Karande for petitioner
Mr. H.P. Nagvekar for R-1 to 3.

CORAM: SMT. RANJANA DESAI, J.
19/8/05

P.C.:-

The petitioner is the original defendant in the suit filed by the original landlord for possession of the suit premises. Respondents are the heirs of original plaintiff landlords.

2. In this civil application the applicant has prayed that delay in filing the application be condoned and the applicant be allowed to carry out necessary amendment by adding the words "since deceased" below name of the petitioner and by incorporating the applicant's name as heir and legal

representative of the petitioner in the title of the present writ petition.

3. R.A.E. & R Suit No. 2299/ 1981 was filed for possession of the suit premises on the grounds of subletting, nuisance and arrears of rent. That suit was decreed. Appeal carried from the said judgment and order was dismissed and hence original defendant filed this writ petition.

4. Original defendant died on 18/9/03. It is the case of the applicant that she is her neice and, therefore, she may be brought on record as heir of the deceased petitioner.

5. I have heard the learned counsel for the parties.

6. The learned counsel for the respondents strenuously opposed this submission. He drew my attention to the judgment of the trial court where the trial court has given a

categorical finding that the petitioner is not the heir of the original tenant i.e. Narayan Sawant. He submitted that the trial court has held that since the petitioner is not the heir and legal representative of deceased Narayan Sawant, she is not a necessary party and, therefore, the suit is not bad for want of necessary party. In view of this the applicant cannot be brought on record.

7. The learned counsel for the applicant on the other hand relied on a certificate issued from Gram Panchayat Kashedi, Taluka Khed, District Ratnagiri, which states that the applicant is in fact the neice of the petitioner. He, therefore, submitted the sole petitioner having died it is necessary to bring her heir on record and hence this application may be allowed.

8. It is true that the trial court has given a finding that the applicant is not the heir of Narayan Sawant, the original tenant. But the

fact remains that she is in fact the neice of the petitioner herein, being her sister's daughter. In the circumstances in that capacity she will have to be brought on record so that the petition does not abate. Needless to say that at the stage of final hearing of the writ petition, both sides will be at liberty to advance all their contentions.

9. In view of this, in my opinion, following order will serve the ends of justice.

(a) Civil application is allowed in terms of prayer (a) and (b).

(b) It is clarified that all contentions of both sides are kept open.

(c) I am informed by the learned counsel for the respondents that the petitioner has not paid the rent of the suit premises since 1986. The learned counsel for the applicant states that the applicant is willing

to pay the arrears of rent and she is willing to continue to pay the rent without prejudice ofcourse to the rights and contentions of both sides.

(d) Hence it is directed that all arrears of rent be paid. The applicant shall deposit arrears of rent from December, 1986 till date in this court within a period of three months from today and she shall continue to pay rent directly to the respondent every month. On the arrears being deposited in this court, the respondents will be at liberty to withdraw the same. The office shall allow the respondents to withdraw the same without security. The order allowing the present civil application in terms of prayer (a) and (b) shall be subject to the applicant depositing the arrears of rent in this court.

(e) Amendment to be carried within two weeks from today.

(f) Civil application disposed of.

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